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SIPDIS

STATE FOR DRL/IL AND EAP/BCLTV  
STATE PASS USDOL ILAB DUS LEVINE, LI ZHAO, BBUI  
STATE ALSO PASS USTR FOR EBRYAN, BCLATANOFF  
STATE ALSO PASS USAID FOR ANTOINETTE FERRARA

BANGKOK FOR USAID

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SUBJECT: VIETNAM'S IMPROVING LABOR CONDITIONS

REF: A) HANOI 125 B) 02 STATE 53127

1. SUMMARY: In the past year and a half since the inaugural labor dialogue (see ref A), Vietnam has seen significant changes in labor conditions. Improved employment opportunities due to a significant increase in trade with the United States, amendments to the Labor Code, the growing role of the ILO in Vietnam, and the commencement of six U.S. Department of Labor projects and one U.S. Department of State project have led to improved work conditions in Vietnam. At the same time, an expansion in the number of enterprises appears to be causing an increase in strikes. Fully committed to continuing down the road to improved work conditions, the Vietnamese government will be a welcoming host of this year's labor dialogue. END SUMMARY.

2. Vietnam is a nation of 80 million people undergoing a long-term transition from a traditional Communist system and state-run economy to a more open society and market-driven economy. It remains firmly under the political control of the Communist Party of Vietnam (CPV), which is intent upon the monopoly of power while nonetheless gradually permitting the expansion of many personal liberties and free markets. Vietnam has embarked upon a course of greater integration into and cooperation with regional and international groupings, both political and economic. Greater adherence to international norms and standards will continue to require some sensitive choices for the leadership about implications for domestic stability, for party control over major institutions, and for enhanced scrutiny by outside influences, some of which many senior officials believe may not be well-intentioned or benign toward Vietnam.

3. Vietnam's relatively young population — more than half of which was born after national unification in 1975 — faces challenges in seeking employment, obtaining access to adequate education and health care, and maintaining adequate levels of economic development. This population remains largely rural, engaged in farming. Of Vietnam's approximately 40 million workers, only 10 to 12 million are industrial workers. The Vietnam General Confederation of Labor (VGCL), Vietnam's trade union, boasts 5 million members. Although this percentage remains small, VGCL's membership has increased in the past 5 years from 3 million.

EXPORT LED GROWTH

4. In 2002, Vietnam continued to grow at a consistent pace, registering a very respectable 5.8 percent growth rate in 2002 (the official government estimate of the growth rate is 7 percent). The outlook is slightly more positive for 2003 despite the economic impact of SARS, with the IMF projecting GDP growth of 5.94 percent (pre-SARS, the IMF had projected 2003 GDP growth of 6.2 percent). This continued expansion of the economy is largely due to a sharp increase in exports to the United States, thanks to the entry into force of the U.S.-Vietnam Bilateral Trade Agreement (BTA) on December 10, 2001.

5. After just 18 months of BTA implementation, the U.S. has become the largest market for Vietnam's exports, accounting for around 21 percent of its total exports. In 2002, Vietnamese exports to the U.S. grew 128 percent compared to 2001. This trend has continued into this year. In the first eight months of 2003, Vietnam's exports to the U.S. reached USD 3.2 billion, up 142 percent over the same period in 2002. Most of this increase in exports has resulted from the rapid expansion of labor-intensive manufactured exports, particularly garments and footwear.

6. This brisk growth of the labor-intensive manufacturing sector has translated into more and better jobs for Vietnam's workers. In 2002, 1.4 million new jobs were created in Vietnam. Although difficult to estimate due to inadequate labor market information, experts estimate that exports to the U.S. have directly created employment in at least the tens of thousands. Faced with more employment opportunities, many workers now feel like they can demand

and receive better working conditions and compensation. In addition, in many export sectors, such as garment production, American buyers demand socially responsible suppliers. As a result, Vietnam has witnessed an improvement in labor conditions and an increase in the number of factories certified in corporate codes of conduct such as SA8000, WRAP, and FLA. In addition, a significant number of buyers, including Adidas, Nike, Gap, and the Limited, are bringing their own codes into Vietnam. (See ref A for further discussion on the expansion of corporate social responsibility in Vietnam).

#### LABOR CODE REVISIONS -----

17. In March 2002, the U.S. Department of Labor (USDOL) and the Vietnamese Ministry of Labor, Invalids, and Social Affairs (MOLISA) held the first labor dialogue since the signing of a Memorandum of Understanding between the two agencies in November 2000 (see ref B). Among other issues, the two sides discussed revisions to Vietnam's Labor Code then being reviewed by the National Assembly. Since that exchange eighteen months ago, the National Assembly has passed these amendments, and MOLISA has issued a significant number of the required implementing regulations.

18. These 2002 amendments to Vietnam's Labor Code and subsequent implementing regulations attempt to improve working conditions through a number of methods. In the past, employers sometimes attempted to avoid providing benefits by continually renewing short-term labor contracts. Under the new amendments, a definite term labor contract may only be renewed once. Thereafter, an indefinite term labor contract must be entered into if employment continues. A new labor contract must now be signed within 30 days of the expiry date; otherwise, the existing labor contract will remain, becoming an indefinite term labor contract. In order to ensure that almost all employees are covered by social insurance, regulations also now require all enterprises to contribute to the social insurance fund for employees on both indefinite labor contracts and labor contracts of more than three months.

19. Previously, compensation for work-related injuries and diseases where an employee's ability to work was reduced by less than 81 percent was unclear. Decree 110 has now clarified payment amounts for those whose ability to work has been reduced by between 5 percent and 81 percent, through no fault of their own. (Note. For those employees who were at fault for the reduction in working capacity, they shall be paid only 40 percent of the amount specified. End note.) Changes to the labor code also improve the compensation for employees unlawfully terminated, now requiring reinstatement and payment for lost wages as well as additional compensation, equivalent to at least two months' salary. Additionally, the amendments remove the previous discrimination in social insurance payments for those women having their third or more child.

110. The GVN has also changed regulations regarding collective labor agreements and trade union establishment. The law now permits any enterprise to register a collective labor agreement, removing previous requirement that a company have ten or more employees. (Note. There is still no obligation to have such an agreement. End note.) Additionally, the law previously required that labor authorities have a 15-day time limit within which to approve or reject the registration of a collective labor agreement. Decree 93 removed this power from the labor authorities, making agreements effective from the date agreed by the parties, or if no date is agreed, from the date of execution. Regarding trade unions, the onus of creating a union no longer rests with the enterprise but is now with the union itself, and MOLISA is now considering a decree on tripartism.

#### ILO IN VIETNAM -----

111. On February 17, the International Labor Organization (ILO) officially opened its office in Vietnam. A member of the ILO since 1992, Vietnam has now ratified four core ILO labor conventions (Conventions 100 and 111 on discrimination and Conventions 138 and 182 on child labor). The most recent ratification was in June of Convention 138 on minimum age. In addition, Vietnam is now seriously considering Conventions 29 and 105 on forced labor. Vietnam has also begun an active dialogue with the ILO on all core labor standards, holding a Declaration on Fundamental Principles and Rights at Work seminar on non-discrimination this year. It has further indicated its willingness to host a Declaration meeting next year when the topic is freedom of association and collective bargaining.

112. The ILO office has not only been active in assisting Vietnam with its efforts to ratify conventions, it has also

undertaken a large number of projects. Ranging from work with the labor inspectorate to efforts to combat trafficking in women in children to support for small enterprises (e.g. business planning, microfinance, association building, etc.), these programs are highly successful and span the country. Always looking for new areas to operate, the ILO is currently considering projects on social insurance, human resource development, and corporate social responsibility.

#### U.S. TECHNICAL ASSISTANCE

13. Under the U.S.-Vietnam MOU on Labor, USDOL and MOLISA agreed to establish a U.S. program of technical assistance in a number of specific areas of cooperation, including social insurance, employment services, disability, industrial relations, child labor, and HIV/AIDS. Starting in November 2001, projects in these six fields have been successfully launched, with strong GVN support of their successful implementation.

14. The social insurance project has and will continue to work on cost projections, social marketing, unemployment insurance, legislative drafting, and general principles of social insurance. The employment service center project has been helping to strengthen staff capacity effectively to provide employment services, establish a strategic management system to monitor each center's performance, and implement technology to allow the exchange of Labor Market Information. The program on employment of persons with disabilities has reviewed Vietnam's legislation, made recommendations for future changes to the Labor Code, remodeled a number of employment service centers, trained staff at these centers, and is now raising public awareness on employing persons with disabilities. The most controversial of the projects -- the industrial relations program -- has started by undertaking tripartite, conciliation, and arbitration training. The child labor project has raised awareness on the role of education in preventing child labor, discussed problems associated with returning children working in cities to their homes, and identified the needs of working children in project sites. The HIV/AIDS workplace prevention program, SMARTWork, has conducted national and provincial level workshops and presentations, completed a comprehensive needs assessment, and begun the process of developing policies and individual programs at the enterprise level.

15. Given that several of these projects have hit their halfway point, the labor dialogue provides USDOL with an important opportunity to discuss the GVN's plans to sustain their work into the future. Although some efforts, such as capacity building, will not need continued financial support, parts of most projects will need a financial commitment from MOLISA. In addition, USDOL may wish to ensure that the policy recommendations being made by the programs are incorporated into the GVN's long-term strategy.

16. The GVN will be looking to discuss future projects. In addition to these six areas of cooperation, the MOU laid out a number of other potential areas for cooperation, including labor market information systems and labor statistics, promotion of employment for women, occupational health and safety, labor inspection, and migrant labor issues. Given Vietnam's extremely low-level of capacity, MOLISA may ask for much-needed assistance with labor market information systems. (Note. The EU may currently be considering a project in this field. End note.) Such help in this field could build on the training provided to two Vietnamese participants in a two-week Bureau of Labor Statistics course. Another potential area for future cooperation could be on migrant labor issues, an area that the ILO office in Hanoi believes is especially in need of assistance.

17. In addition to these six USDOL-funded projects, U.S. Department of State is funding a program with Social Accountability International (SAI) to ensure a transparent, comprehensive program for promoting the implementation of SA8000 corporate code of conduct. In order to achieve this goal, SAI is working with the private sector, civil society, trade unions and government actors in an attempt to identify and address potential challenges to implementing its standard according to its original intent. More specifically, it is conducting research, evaluation, public education, training, and business development. One of the most interesting outcomes of this project is a cost-benefit analysis on undertaking the SA8000 accreditation process.

#### STRIKES

18. According to the Vietnamese Ministry of Labor, 72 strikes have taken place, primarily in the southern part of the Vietnam, in the first six months of the year. Of these, 51 were against foreign-invested enterprises, 18 involved domestic private enterprises, and 3 affected state-owned

firms. In 2002, 88 strikes occurred, an increase of fifteen over the previous year. Foreign-invested enterprises experienced 54 incidences, domestic private enterprises were affected by 29 strikes, and state-owned firms had 5 strikes.

19. Experts in Vietnam attribute this continuous increase in the number of strikes to a number of factors. First, between 2000 and 2002, the number of enterprises in Vietnam rose from 14,000 to almost 50,000. Although most of these are small operations, the ever-growing number of businesses means that there are more places of work and, therefore, more places to strike. Second, the increasing size of the economy also means that both employers and employees are feeling the stress of competitive pressures. This situation has both positive and negative effects on labor conditions, with workers feeling freer to leave a job or go on strike if another employer offers better conditions and companies feeling the need to produce better goods at cheaper prices. Third, workers are becoming increasingly aware as to their rights and are striking when those rights are violated.

20. Overall, labor conditions in Vietnam continue to improve every year. A combination of government, international, and private sector efforts are reaping real rewards for Vietnam's workers. Still, the GVN acknowledges that real problems exist in this field and that gains are not uniform. It has, therefore, actively engaged the international community in assistance and dialogue. Fully committed to continuing down the road to improved work conditions, the Vietnamese government will be a welcoming host of this year's labor dialogue.

BURGHARDT